

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN SENATE MAY 3, 2011

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE APRIL 4, 2011

**SENATE BILL**

**No. 595**

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**Introduced by Senator Wolk**

February 17, 2011

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An act to amend Section 523 of the Harbors and Navigation Code, and to amend Section 6302.1 of, and to add Sections 6302.3, ~~6302.4,~~ and ~~6302.5~~ and 6302.4 to, the Public Resources Code, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 595, as amended, Wolk. Tidelands and submerged lands: removal of vessels.

Existing law authorizes any peace officer, as described, any employee or officer of the State Lands Commission designated by the commission, or any lifeguard or marine safety officer employed by a county, city, or district, while engaged in the performance of official duties, to remove, and, if necessary, store a vessel, as defined, removed from a public waterway under specified circumstances.

This bill would eliminate the authority of any employee or officer of the State Lands Commission designated by the commission, while engaged in the performance of official duties, to remove and, if necessary, store a vessel removed from a public waterway.

Existing law authorizes the commission to remove from areas under its jurisdiction any vessel, boat, raft, or other similar watercraft that is left unattended and is moored, docked, or beached as to obstruct traffic

or to create a hazard to other vessels or property, that poses critical and immediate danger to navigation or the public health, safety, or welfare, or that hinders navigation or creates a public nuisance.

This bill would revise those provisions to authorize the commission to remove a vessel, as defined, in those and similar conditions immediately and without notice. The bill would authorize the commission to remove and dispose of, from areas under its jurisdiction, a vessel that has been placed on state lands without its permission if, prior to removal, the commission gives a 30-day notice to remove the vessel, as prescribed, and uses reasonable means to identify and locate the owner and any lienholder.

Existing law authorizes the commission, through appropriate action in the courts, to remove or destroy a vessel, boat, watercraft, or other similar obstruction that hinders navigation or otherwise creates a public nuisance in areas under the commission's jurisdiction.

This bill would, instead, provide that a vessel that remains unclaimed, *as defined*, for a period longer than 30 days after notice of removal is abandoned property. The bill would establish procedures for the commission to sell, destroy, or otherwise dispose of this property. The bill would require that any proceeds from the sale of this property, less the commission's costs, be deposited into the General Fund. The bill would further authorize the commission, at its discretion, to remove an abandoned or derelict vessel on a navigable waterway that is not under its jurisdiction, if requested to do so by another public entity that has regulatory authority over the area where the vessel is located.

This bill would exempt the above-described actions of the commission related to the removal, disposal, and destruction of a vessel or other similar obstructions that hinder navigation or otherwise create a public nuisance from the State Contract Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 523 of the Harbors and Navigation Code
- 2 is amended to read:
- 3 523. (a) Any peace officer, as described in Section 663, or any
- 4 lifeguard or marine safety officer employed by a county, city, or
- 5 district while engaged in the performance of official duties, may

1 remove, and, if necessary, store a vessel removed from a public  
2 waterway under any of the following circumstances:

3 (1) When the vessel is left unattended and is moored, docked,  
4 beached, or made fast to land in a position that obstructs the normal  
5 movement of traffic or in a condition that creates a hazard to other  
6 vessels using the waterway, to public safety, or to the property of  
7 another.

8 (2) When the vessel is found upon a waterway and a report has  
9 previously been made that the vessel has been stolen or a complaint  
10 has been filed and a warrant thereon issued charging that the vessel  
11 has been embezzled.

12 (3) When the person or persons in charge of the vessel are by  
13 reason of physical injuries or illness incapacitated to an extent as  
14 to be unable to provide for its custody or removal.

15 (4) When an officer arrests any person operating or in control  
16 of the vessel for an alleged offense, and the officer is, by any  
17 provision of this code or other statute, required or permitted to  
18 take, and does take, the person arrested before a magistrate without  
19 unnecessary delay.

20 (5) When the vessel interferes with, or otherwise poses a danger  
21 to, navigation or to the public health, safety, or welfare.

22 (6) When the vessel poses a threat to adjacent wetlands, levies,  
23 sensitive habitat, any protected wildlife species, or water quality.

24 (7) When a vessel is found or operated upon a waterway with  
25 a registration expiration date in excess of one year before the date  
26 on which it is found or operated on the waterway.

27 (b) Costs incurred by a public entity pursuant to removal of  
28 vessels under subdivision (a) may be recovered through appropriate  
29 action in the courts of this state.

30 SEC. 2. Section 6302.1 of the Public Resources Code is  
31 amended to read:

32 6302.1. (a) (1) The commission may take immediate action,  
33 without notice, to remove from areas under its jurisdiction a vessel  
34 that is left unattended and is moored, docked, beached, or made  
35 fast to land in a position as to obstruct the normal movement of  
36 traffic or in a condition as to create a hazard to navigation, other  
37 vessels using a waterway, or the property of another.

38 (2) The commission may take immediate action, without notice,  
39 to remove from areas under its jurisdiction a vessel that poses a  
40 significant threat to the public health, safety, or welfare or to

1 sensitive habitat, wildlife, or water quality, or that constitutes a  
2 public nuisance.

3 (3) A vessel removed under this section that remains unclaimed  
4 for 30 days after notice of removal is abandoned property.

5 (4) After removal of the vessel pursuant to paragraph (1) or (2),  
6 the commission shall mail a notice to the owner, if known, and  
7 any known lienholder, that informs the owner and lienholder that  
8 if the vessel remains unclaimed for 30 days, it will be deemed  
9 abandoned property, and the commission may dispose of it pursuant  
10 to Section 6302.3.

11 (b) (1) The commission may remove from areas under its  
12 jurisdiction a vessel that has been placed on state lands without its  
13 permission. Prior to removal of the vessel, the commission shall  
14 do both of the following:

15 (A) Give a 30-day notice to remove the vessel by attaching it  
16 to the vessel in a clearly visible place.

17 (B) Use reasonable means to identify and locate the owner and  
18 any lienholder. If the owner is located, the commission shall mail  
19 notice to the owner to remove the property by a date certain at  
20 least 15 days from the date of the notice.

21 (2) If a vessel remains unclaimed after the expiration of the 30  
22 days' notice period and the 15 days' owner notice, if applicable,  
23 in accordance with paragraph (1), it is abandoned property and the  
24 commission may direct the disposition of the property pursuant to  
25 Section 6302.3. The commission may also either remove the vessel  
26 or allow it to remain in place until the commission takes action to  
27 dispose of the property.

28 (c) Upon request of the owner and after payment of the costs  
29 of removal and storage, the commission shall return to the owner  
30 a vessel removed under this section.

31 (d) The commission, at its discretion, may remove and dispose  
32 of an abandoned or derelict vessel on a navigable waterway in the  
33 state that is not under the jurisdiction of the commission pursuant  
34 to this section, if requested to do so by another public entity that  
35 has regulatory authority over the area where the vessel is located.

36 (e) The commission may recover all costs incurred in removal  
37 actions undertaken pursuant to this section, including administrative  
38 costs and the costs of compliance with the requirements of the  
39 California Environmental Quality Act (Division 13 (commencing  
40 with Section ~~21000~~ 21000)), through an appropriate action in the

1 courts of this state or by use of any available administrative  
2 remedy.

3 (f) For purposes of this section the following definitions apply:

4 (1) “Appropriate action” means any cause of action available  
5 at law or in equity.

6 (2) “Commission” includes the staff or agents of the commission  
7 or other federal, state, or local agencies operating in concert with  
8 or under the direction of the commission.

9 (3) *“Unclaimed” means that an owner or a lienholder of the*  
10 *vessel has not contacted the commission in response to a notice*  
11 *made pursuant to this section, if notice is required, and has not*  
12 *made adequate arrangements to take or remove the vessel to an*  
13 *authorized location.*

14 ~~(3)~~

15 (4) “Vessel” includes any of the following:

16 (A) A vessel, boat, raft, or similar watercraft.

17 (B) A buoy, anchor, mooring, or other ground tackle used to  
18 secure a vessel, boat, raft, or similar watercraft.

19 (C) A hulk, derelict, wreck, or parts of a ship, vessel, or other  
20 watercraft.

21 SEC. 3. Section 6302.3 is added to the Public Resources Code,  
22 to read:

23 6302.3. (a) The commission, at a properly noticed commission  
24 hearing, may take title to an abandoned vessel subject to disposal  
25 pursuant to Section 6302.1 for the sole purpose of abatement,  
26 without satisfying any lien on the property, and may cause the  
27 property to be sold, destroyed, or otherwise disposed of in any  
28 manner it determines is expedient or convenient. Those abandoned  
29 vessels shall not be considered surplus state property for the  
30 purposes of removal, disposal, or destruction. Title to property  
31 transferred by the commission by sale or otherwise to third parties  
32 shall be clear of any lien or encumbrance.

33 (b) Notice of that meeting shall be given to a known owner and  
34 known lienholder, and the known owner, lienholder, or other  
35 interested party shall be given the right to appear and be heard  
36 prior to disposition of the property.

37 (c) A hearing on the disposition of property held pursuant to  
38 this section shall be an informal hearing pursuant to Section  
39 11445.20 of the Government Code, unless designated as a formal  
40 hearing by the commission.

(d) Any action with regard to the disposition of the property as directed by the commission, with the exception of returning the property to the owner, shall be delayed for 30 days after the date of the commission's determination, to allow the owner to pursue any other cause of action in law or equity.

(e) The commission's cost of disposing of abandoned property, including staff time and legal and attorney's fees, may be recovered by appropriate action in any court in which an action may be properly brought or by use of any available administrative remedy. If the property is sold, the commission may recover its costs from any proceeds of the sale and any additional funds received shall be deposited into the General Fund.

SEC. 4. Section 6302.4 is added to the Public Resources Code, to read:

6302.4. (a) At the request of the commission, an employee or agent of the commission or a peace officer of the federal or state government or a city, county, or other political subdivision of the state shall have the authority to board a vessel for the purposes of carrying out Section 6302.1 or 6302.3.

(b) An action of the commission with regard to any property acquired or disposed of pursuant to Section 6302.1 or 6302.3 is exempt from the State Contract Act (Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code).

~~SEC. 5. Section 6302.5 is added to the Public Resources Code, to read:~~

~~6302.5. To the extent that Sections 6302.1, 6302.3, and 6302.4 may be in conflict with Article 1 (commencing with Section 510) of Chapter 3 of Division 3 of the Harbors and Navigation Code, Sections 6302.1, 6302.3, and 6302.4 shall govern.~~